



*Stephen C. Howard*  
Orange County Attorney

ID# 11573  
SG

Orange Courthouse

Orange, Texas 77630

409-883-7740

*RQ-36*

January 24, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

**Opinion Committee**

Re: Whether a county commissioner violates his official oath of office by working privately as an employee for a criminal bail bonding company that is licensed from the bail bond board for said county.

Dear Honorable Dan Morales:

Please find enclosed my memorandum asking for an opinion regarding the above stated issue. Please contact me at your earliest convenience should you have further questions.

Sincerely,

*Stephen C. Howard*  
STEPHEN C. HOWARD  
County Attorney

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enclosure

## ISSUE

Whether a county commissioner violates his official oath of office not to be interested, directly or indirectly, in a contract with or claim against the county, by working privately as an employee for a criminal bail bonding company that is licensed by the bail bond board for said county.

## FACTS

On January 1, 1989, Mr. Joe Ware, Sr. became a county commissioner in Orange County. Prior to January 1, 1989, Mr. Ware, Sr. was actively involved in the bail bonding business. In 1982, he organized a bonding business, Joseph E. Ware, Inc. Later, in 1985, his son, Joe Ware, Jr., split from his father's business and formed his own bonding business, All Star Bonding Co. Mr. Ware, Sr. acted as an agent making bonds for All Star Bonding Co.

After the Attorney General Opinion JM-927, which stated that "[a] commissioner may not act as a surety on a bail bond for a defendant in which he and the county he serves have an interest[,]" and the two opinion letters to the Orange County Attorney Stephen C. Howard, dated November 17, 1988 and December 19, 1988, and identified as LO-88-127 and LO-88-136 respectively, Mr. Ware, Sr. left the bail bonding business prior to taking the oath of office on January 1, 1989.

Now, to circumvent the law and remain in the bail bonding business despite being a county commissioner, Mr. Joe Ware, Sr. has accepted employment with the Gramercy Insurance Company, doing business as ABC Bail Bonds and seeks a bail bond identification

card to reflect his current employment. See Exhibit A. A bail bond identification card entitles the holder to gain admittance to the Orange County Jail in order to conduct bail bond business with inmates. Gramercy Insurance Company d/b/a ABC Bail Bonds is licensed by the Orange County Bail Bond Board and presently is in the business of making criminal bail bonds in Orange County.

#### ARGUMENT

It is the position of this office that Mr. Ware, Sr.'s employment with ABC Bail Bonds is in violation of his official oath of office as a county commissioner. Subsection (a) of section 81.002 of the Local Government Code provides:

Before undertaking the duties of the county judge or a county commissioner, a person must take the official oath and swear in writing that the person will not be interested, directly or indirectly, in a contract with or claim against the county.

Not only does this oath prohibit a county commissioner from acting as a surety on a bail bond, Attorney General Opinion JM-927 (1988), it also prohibits a county commissioner from acting as an employee with a bail bonding company. The oath precludes even a negligible interest by the commissioner. Attorney General Opinion H-624 (1975). "[M]embers of a commissioners court must avoid all situations which result in their personal pecuniary gain at the expense of the county." Id. (emphasis added). As an employee of ABC Bail Bonds, Mr. Ware, Sr. certainly has more than a negligible interest. He will earn either a salary or a commission for each bond he brings to the company. This salary or commission is a pecuniary gain for Mr. Ware, Sr. On the other hand, if the bond

which Mr. Ware, Sr. obtains for his company is forfeited, it becomes an amount owed to the county<sup>1</sup> which he represents as county commissioner. In a prior legal action on another issue, Mr. Ware, Sr. agreed that the payment for outstanding bail bond forfeiture judgments is owed to the county. See Orange County v. Ware, No. C-9611, slip. op. at 2 (Tex. Jan. 2, 1991).

Mr. Ware, Sr. cannot give Orange County his undivided loyalty and support to actively pursue bond forfeiture proceedings while also being an employee of a bail bonding company. See Bexar County v. Wentworth, 378 S.W.2d 126, 129 (Tex. Civ. App. 1964, writ ref'd n.r.e.) (finding that county commissioner who also was representative of voting machines corporation was not in position to give county his undivided loyalty and support). Attorney General Opinion JM-1006 (1989) (citing Bexar County v. Wentworth). Mr. Ware, Sr.'s loyalties are both divided and conflicting. As an employee he owes a duty to his employer and as a county commissioner he owes a duty to Orange County. Employment contracts contain implied obligations such as "an employee will not do an act that has a tendency to injure the employer's business or financial interest." Turner v. Byers, 562 S.W.2d 507, 510 (Tex. Civ. App. 1978, ref. n.r.e.); see Wildman v. Ritter, 469 S.W.2d 446, 448 (Tex. Civ. App. 1971, ref. n.r.e.) (stating that "[t]here is an implied obligation on the part of the employee to do no act which has a tendency to injure the employer's business, interest or

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<sup>1</sup>Attorney General Opinion JM-927 acknowledged that "[a] bail bond has been defined as a contract between the government and the defendant and his surety."

reputation). When a bail bond is forfeited, the county collects from the bonding company the amount in which it is bound. Consequently, the bond forfeiture proceeding adversely affects the bonding company's financial interest. Mr. Ware, Sr.'s interests are divided between ABC Bail Bonds not losing money and Orange County actively pursuing bond forfeiture proceedings. His employment interest violates the county commissioner's official oath.

Additionally, public policy prohibits public officers from "engaging in private activities that conflict with their public duties." Attorney General Opinion JM-1006 (1989). Moreover, public policy denies dual agency.

In all cases the principal is entitled to the best effort and unbiased judgment of his agent, and the law, for reasons founded in public policy, forbids the agent's assumption of a relation which affords temptations antagonistic to his duty.

Scott v. Kelso, 130 S.W. 610, 611 (Tex. Civ. App. 1910).

#### CONCLUSION

Acting as an employee for a bail bonding company is, at a minimum, an indirect interest in a contract with or claim against the county which is a violation of a county commissioner's official oath.